

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X  
MANUEL A. CENTENO,

07 Civ. 7647 (JGK)

Plaintiff,

*Answer to Complaint*

-against-

EAST 115<sup>th</sup> STREET ASSOCIATES, INC.,

Defendant.  
-----X

Defendant EAST 115<sup>th</sup> STREET ASSOCIATES, INC., by its attorneys, WADE CLARK MULCAHY, as and for an answer to the plaintiff's complaint, respectfully alleges:

1. Denies knowledge and information sufficient to form a belief as to the truth of this allegation.
2. Denies except admits that the defendant is a New York corporation, duly organized and existing under and by virtue of the laws of the State of New York.
3. Admitted.
4. Denies except admits that at all times hereinafter mentioned, the defendant owned the aforementioned premises.
5. Denies except admits that at all times hereinafter mentioned, the defendant owned the aforementioned premises.

**JURISDICTION AND VENUE**

6. Denies knowledge and information sufficient to form a belief as to the truth of this allegation.
7. Denies and leaves all matters of law to the Honorable court.
8. Denies and leaves all matters of law to the Honorable court.

**THE UNDERLYING FACTS**

9. Denies knowledge and information sufficient to form a belief as to the truth of this allegation.

10. Denies upon information and belief.

11. Denies upon information and belief.

**AS AND FOR AN ANSWER TO A FIRST CLAIM FOR RELIEF**

12. Denies upon information and belief.

13. Denies upon information and belief.

14. Denies upon information and belief.

***AS AND FOR A FIRST AFFIRMATIVE DEFENSE***

15. The complaint fails to state a claim upon which relief may be granted.

***AS AND FOR A SECOND AFFIRMATIVE DEFENSE***

16. Pursuant to CPLR Article 16, the liability of defendant EAST 115<sup>th</sup> STREET ASSOCIATES, INC., to the plaintiff herein for non-economic loss is limited to defendant EAST 115<sup>th</sup> STREET ASSOCIATES, INC. equitable share determined in accordance with the relative culpability of each person causing or contributing to the total liability for non-economic loss.

***AS AND FOR A THIRD AFFIRMATIVE DEFENSE***

17. Plaintiff MANUEL A. CENTENO has recovered the costs of medical care, dental care, custodial care, rehabilitation services, loss of earnings and other economical loss and any future such loss or expense will, with reasonable certainty, be replaced or indemnified in whole or in part from collateral sources. Any award made to plaintiff

MANUEL A. CENTENO shall be reduced in accordance with the provisions of CPLR 4545(c).

***AS AND FOR A FOURTH AFFIRMATIVE DEFENSE***

18. Any damages sustained by the plaintiff MANUEL A. CENTENO was caused by the culpable conduct of the plaintiff MANUEL A. CENTENO, including contributory negligence, assumption of risks, breach of contract and not by the culpable conduct or negligence of this answering defendant. But if a verdict of judgment is awarded to the plaintiff MANUEL A. CENTENO, then and in that event the damages shall be reduced in the proportion which the culpable conduct attributable to the plaintiff MANUEL A. CENTENO bears to the culpable conduct which caused the damages.

***AS AND FOR A FIFTH AFFIRMATIVE DEFENSE***

19. Plaintiff may have failed to mitigate damages.

***AS AND FOR A SIXTH AFFIRMATIVE DEFENSE***

20. Plaintiff's alleged loss and damage, if any, resulted wholly and solely from the fault, neglect and want of care of the plaintiff or persons or parties other than defendant, for whose acts said defendant is not liable or responsible and not as a result of any negligence.

***AS AND FOR A SEVENTH AFFIRMATIVE DEFENSE***

21. This defendant is entitled to a set-off if any tort feisor has or will settle with plaintiffs pursuant to G.O.L. 15-108.

***AS AND FOR AN EIGHTH AFFIRMATIVE DEFENSE***

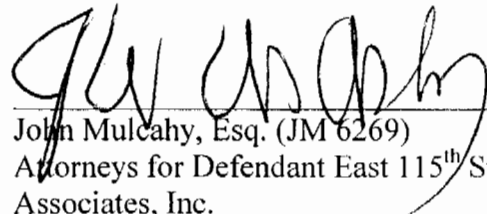
22. That by entering into the activity in which the plaintiff MANUEL A. CENTENO was engaged at the time of the occurrence set forth in the complaint, said

plaintiff MANUEL A. CENTENO knew the hazards thereof and the inherent risks incident thereto and had full knowledge of the dangers thereof; that whatever injuries and damages were sustained by the plaintiff MANUEL A. CENTENO herein as alleged in the complaint arose from and were caused by reason of such risks voluntarily undertaken by the plaintiff MANUEL A. CENTENO in his activities and such risks were assumed and accepted by him in performing and engaging in said activities.

WHEREFORE, defendant EAST 115<sup>th</sup> STREET ASSOCIATES, INC. demands judgment dismissing the complaint herein together with the costs and disbursements of this action.

Dated: New York, New York  
November 19, 2007

WADE CLARK MULCAHY



John Mulcahy, Esq. (JM 6269)  
Attorneys for Defendant East 115<sup>th</sup> Street  
Associates, Inc.  
111 Broadway, 9<sup>th</sup> Floor  
New York, New York 10006  
(212) 267-1900  
Our File No.: 195.5480.3

TO: (See Attached Affidavit)

STATE OF NEW YORK )  
COUNTY OF NEW YORK ) ss:

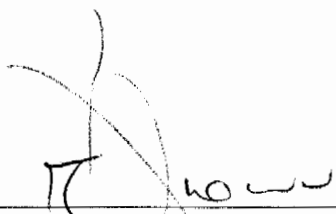
Andrea P. Brown, being duly sworn, deposes and says:

That I am not a party to the within action, am over 18 years of age and reside in Brooklyn, New York.

That on November 19, 2007, deponent served the within *Answer to Complaint* upon the attorneys and parties listed below by United States prepaid mail:

TO:

Jaroslawicz & Jaros, LLC  
Attorneys for Plaintiff  
225 Broadway – 24<sup>th</sup> Floor  
New York, New York 10007  
(212) 227-2780

  
\_\_\_\_\_  
Andrea P. Brown

Sworn to before me this  
19<sup>th</sup> day of November 2007

  
\_\_\_\_\_  
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**JOHN MULCAHY**  
Notary Public, State of New York  
No. 02MU5005320  
Qualified in Westchester County  
Commission Expires Dec. 7, 2012



UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

MANUEL A. CENTENO,

Plaintiff,

-against-

EAST 115<sup>th</sup> STREET ASSOCIATES, INC.,

Defendant.

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**Answer to Complaint**

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**Wade Clark Mulcahy**  
Attorneys for Defendant East 115<sup>th</sup> Street Associates, Inc.  
111 Broadway  
New York, N.Y. 10006  
(212) 267-1900

To: \*\*\*

Attorney(s) for \*\*\*

Service of a copy of the within \*\*\* is hereby admitted.

Dated: \*\*\*

.....  
Attorney(s) for \*\*\*

**PLEASE TAKE NOTICE**

☐ that the within is a (certified) true copy of a \*\*\*  
entered in the office of the clerk of the within named Court on \*\*\*

**NOTICE OF  
ENTRY**

☐ that an Order of which the within is a true copy will be presented for  
settlement to the Hon. \*\*\*

☐ one of the judges of the within named Court, at \*\*\*, on \*\*\*, at \*\*\*.

**NOTICE OF  
SETTLEMENT**

Dated: \*\*\*

**Wade Clark Mulcahy**  
Attorneys for Defendant East 115<sup>th</sup> Street Associates, Inc.  
111 Broadway  
New York, N. Y. 10006